

### REMARKS

Claims 14-24 are pending in the present application with claims 1-13 canceled in a preliminary amendment. With entry of this Amendment, Applicants amend claims 14 and 16, cancel claim 15 and add claim 25. Reexamination and reconsideration are respectfully requested.

The Examiner rejected claims 21-23 under 35 U.S.C. § 101 as claiming the same invention as that of claims 34, 36 and 38 of US 6452082. Applicants respectfully traverse the rejection, because claims 21-23 are directed to a different statutory class than claims 34, 36 and 38 and, thus, cannot be claiming the *same* invention. Section 101 states that “[w]hoever invents or discovers any new and useful process, machine, manufacture, *or* composition of matter . . . may obtain a patent therefore” (emphasis added). The use of “or” in § 101 indicates that each process, machine, manufacture or composition of matter -- i.e., each statutory class -- can be the subject of a separate patent. What § 101 prohibits is two identical claims directed to the same statutory class. Applicants have not done this, because claims 21-23 are directed to a *method* of making a medium while claims 34, 36 and 38 are all directed to a *medium*. Accordingly, Applicants respectfully request that the Examiner withdraw the rejection.

The Examiner rejected claim 16 under 35 U.S.C. § 101 as claiming the same invention as that of claim 37 of the ‘082 Patent. Applicants respectfully traverse the rejection for the same reasons as discussed above. Claim 16 of the present application is directed to a *method* of forming musical tone waveform data, while claim 37 is directed to a musical tone generating *apparatus* for processing musical performance data. Accordingly, Applicants respectfully request that the Examiner withdraw the rejection.

The Examiner rejected claim 14 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 28 of the ‘082 Patent. Applicants herewith submit a terminal disclaimer and respectfully request that the Examiner withdraw the rejection.

The Examiner rejected claims 14-17 and 21-24 under 35 U.S.C. § 102(b) as being anticipated by Serra et al. (US 5536902). The rejection is respectfully traversed.

The present invention is directed to a tone-generating method capable of faithfully expressing variations in the tone color of musical tones effected by a player through various performance methods. The invention allows performance method codes to be assigned to performance information. Fig. 7A illustrates that the performance information includes event data 32 (e.g., key-on and key-off) and duration or timing data 33. Fig. 7B shows the assignment of a performance method code to an event of the performance information. Fig. 8 illustrates that the performance information is read out event-by-event as modified by the applicable performance method codes.

In contrast, Serra does not disclose analyzing or reproducing performance data of a musical performance, but rather utilizes time frames. Figs. 1 and 2 of Serra illustrates an analysis section 10 that receives an input sound signal. The input sound signal is first processed by a time window processing section (see 20a in Fig. 2). According to Col. 1, lines 58-64, the input sound signal is “broken into a series of frames or time frames which may also be called ‘time windows.’” Once separated into these time frames, the analysis section 10 analyzes each frame separately. Serra further discloses that the reproduction of desired sounds is also done in a frame by frame manner. See Col. 13, lines 43-48 (“Then, when sound-generation-start is instructed by the user, a sequence of frames is caused to starts [sic], so that, of the readout-enabled set of data, the SMS data and various parameters for a specific frame designated by the frame sequence are actually read out from the data memory 100.”)

Thus, Serra discloses merely breaking up a sound signal into time frames. There is no disclosure or suggestion in Serra of analyzing or reproducing performance data defining a performance. That is, Serra does not disclose “musical performance data” as recited in claims 14, 16, 17 and 19-25. All that is disclosed is analyzing sound that makes up a performance. Because Serra fails to disclose or suggest receiving, analyzing or reproducing “musical performance data” as recited in claims 14, 16, 17 and 19-25, claims 14, 16, 17 and 19-25 are not anticipated by or obvious in view of Serra.

Claim 14 is not anticipated by or obvious in view of Serra for at least another reason. Claim 14 is directed to a method of processing musical performance data. The method includes

selecting a tone color for pieces of musical performance data and designating a performance method for each of the pieces from among a plurality of performance methods peculiar to the selected tone color. The method also includes the step of attaching performance method data indicative of the designated performance method to each of the pieces.

As discussed above, Serra discloses an analysis section 10 that extracts musical parameters from an input sound signal and stores them in a memory with other data. A synthesis section 11 reads out the stored data and musical parameters to reproduce a desired sound as noted by the Examiner (see Col. 13, lines 39-51 and Col. 14, lines 51-60). All that the cited sections disclose is that a musical parameter of an input sound signal can be extracted and modified. However, the cited sections do not disclose or suggest that the user can designate a performance method from among a plurality of performance methods peculiar to a selected tone color and then attach the designated performance method to a piece of musical performance data as recited in claim 14. Accordingly, Applicants respectfully submit that claim 14 and its new dependent claim 25 are not anticipated by or obvious in view of Serra for this reason as well.

Claim 22 recites the step of “forming musical tone data by attaching performance method data indicative of a performance method corresponding to a result of said analyzing to said musical performance data . . . .” For the reasons set forth immediately above with respect to claim 14, claim 22 is not anticipated by or obvious in view of Serra.

The Examiner rejected claims 18-20 under 35 U.S.C. § 103(a) as being unpatentable over Serra in view of Kellogg et al. (US 4930390) and Kakishita et al. (US 5591930). The rejection is respectfully traversed.

Claim 18 recites displaying performance methods for selection corresponding to each of the selected tone colors on display. The Examiner has acknowledged that Serra does not disclose displaying performance methods and has cited Kellogg (Figs. 7A and 7B) and Kakishita (Figs. 3, 4 and 9) as disclosing the display of performance methods. However, Figs. 7A and 7B of Kellogg do not disclose any performance *methods*, such as glissando, tremolo, etc. The cited figures of Kakishita are directed to flow charts showing processing by a digital signal processor or the

structure of buffers. They do not disclose displaying any performance methods. Accordingly, Applicants respectfully submit that claim 18 and its dependent claims 19 and 20 are not obvious in view of the cited references, either alone or in combination.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

If, for any reason, the Examiner finds the application other than in condition for allowance, Applicants request that the Examiner contact the undersigned attorney at the Los Angeles telephone number (213) 892-5630 to discuss any steps necessary to place the application in condition for allowance.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. 393032001901.

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Respectfully submitted,

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